STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Kansas

TRANSFER OF RESOURCES

1902(f) and 1917 of the Act

The agency provides for the denial of eligibility by reason of disposal of resources for less than fair market value.

A. Except as noted below, the criteria for determining the period of ineligibility are the same as criteria specified in section 1613(c) of the Social Security Act (Act).

1. Transfer of resources other than the home of an individual who is an inpatient in a medical institution.

a. /X/ The agency uses a procedure which provides for a total period of ineligibility greater than 24 months for individuals who have transferred resources for less than fair market value when the uncompensated value of disposed of resources exceeds $12,000. This period bears a reasonable relationship to the uncompensated value of the transfer. The computation of the period and the reasonable relationship of this period to the uncompensated value is described as follows:

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b. /X/ The period of ineligibility is less than 24 months, as specified below:

Refer to pages 7a - 7c.

c. /X/ The agency has provisions for waiver of denial of eligibility in any instance where the State determines that a denial would work an undue hardship.

Refer to pages 7a - 7c.

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2. Transfer of the home of an individual who is an inpatient in a medical institution.

/X/ A period of ineligibility applies to inpatients in an SNF, ICF or other medical institution as permitted under section 1917(c)(2)(B)(i).

a. Subject to the exceptions on page 2 of this supplement, an individual is ineligible for 24 months after the date on which he disposed of the home. However, if the uncompensated value of the home is less than the average amount payable under this plan for 24 months of care in an SNF, the period of ineligibility is a shorter time, bearing a reasonable relationship (based on the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

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b. /X/ Subject to the exceptions on page 2 of this supplement, if the uncompensated value of the home is more than the average amount payable under this plan as medical assistance for 24 months of care in an SNF, the period of ineligibility is more than 24 months after the date on which he disposed of the home. The period of ineligibility bears a reasonable relationship (based upon the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

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No individual is ineligible by reason of item A.2 if--

(i) A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual can reasonably be expected to be discharged from the medical institution and to return to that home;

(ii) Title to the home was transferred to the individual's spouse or child who is under age 21, or (for States eligible to participate in the State program under title XVI of the Social Security Act) is blind or permanently and totally disabled or (for States not eligible to participate in the State program under title XVI of the Social Security Act) is blind or disabled as defined in section 1614 of the Act;

(iii) A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual intended to dispose of the home either at fair market value or for other valuable consideration; or

(iv) The agency determines that denial of eligibility would work an undue hardship.

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3. 1902(f) States

/_/ Under the provisions of section 1902(f) of the Social Security Act, the following transfer of resource criteria more restrictive than those established under section 1917(c) of the Act, apply:

B. Other than those procedures specified elsewhere in the supplement, the procedures for implementing denial of eligibility by reason of disposal of resources for less than fair market value are as follows:

1. If the uncompensated value of the transfer is $12,000 or less:

2. If the uncompensated value of the transfer is more than $12,000:

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3. If the agency sets a period of ineligibility of less than 24 months and applies it to all transfers of resources (regardless of uncompensated value):

4. Other procedures:

**I. FOR TRANSFERS OCCURRING PRIOR TO AUGUST 11, 1993:**

An institutionalized individual shall not be eligible for medical assistance for coverage of institutional care or HCBS if such individual transferred property for less than fair market value within a 30 month time period prior to or after the date the individual received or was otherwise eligible to receive assistance for such services. For purposes of this section, an institutionalized individual is an applicant or recipient who is residing or is about to reside in a Medicaid-approved institutional or HCBS living arrangement. Institutional care shall be defined as either nursing facility services (ICF or SNF level) or a level of care in a medical institution equivalent to that of nursing facility services. A transfer of property is an act, contract, or lease which partially or totally passes the use, control and/or ownership of property to another person or corporation. Multiple transfers of property that occur within the calendar month shall be treated as a single transfer. In addition, multiple transfers that occur over several months and which effectively reduce the period of ineligibility that would have resulted had the transfers occurred in one month shall be treated as a single transfer.

The following transfers shall not affect eligibility under this provision:

(1) Transfers which occurred beyond the 30 month time frame listed above;

(2) A transfer of the institutionalized individual's home to:

(a) the spouse of the institutionalized individual;

(b) a child of the institutionalized individual who is under the age of 21 or an adult child who meets the blindness or disability criteria of the SSI program;

(c) A sibling of the institutionalized individual who has an equity interest in the home and who was residing in the home for a period of at least 1 year immediately before the date the individual entered the institutional or HCBS arrangement; or

(d) an adult child of the institutionalized individual other than described in item (b) above who was residing in the home for a period of at least 2 years immediately before the date the individual entered the institutional arrangement and who provided care to the individual which permitted him or her to reside at home rather than in such institutional arrangements.

(3) Transfers of property that have been approved by the agency;

(4) A transfer of property, other than the home, to the institutionalized individual's child, regardless of his or her age, who meets the blindness or disability criteria of the SSI program; and

(5) A transfer of property, other than the home, to a spouse or to another for the sole benefit of the spouse, if the individual's spouse does not transfer these resources to another person for less than fair market value.

Unless otherwise exempted above, a transfer of real and/or personal property to an irrevocable trust or similar irrevocable legal device shall be considered a transfer without adequate consideration if the principal of the trust is not available except as provided for under section 1902(k) of the Social Security Act. This is due to the fact that the person who created the trust does not retain the right to dissolve or amend the trust for purposes of obtaining the resource. Trusts established for burial purposes such as a $3000 irrevocable funeral agreement created under K.S.A. 16-303 or trusts used to fund prepurchased burial merchandise are not affected by this provision. The trust must have been established with the person's own assets and by either the applicant/recipient or by the applicant/recipient's spouse, legal guardian (including a parent), or legal representative.

In determining the uncompensated value of the property, the agency shall: (1) establish the fair market value of the property; (2) determine the equity value in the property (fair market value less encumbrances); and (3) determine the amount of sale price of the property. The uncompensated value shall be the lesser of (1) the difference between the fair market value and the sale price or (2) the equity value.

A period of ineligibility shall be established if full compensation was not received and the client has not established clear and convincing evidence that the transfer was not for the purpose of establishing eligibility. The client shall be given the opportunity to rebut the State's presumption that he or she transferred resources for less than fair market value. The client shall not be ineligible for assistance if such action is necessary to avoid undue hardship. In order to grant hardship, the individual must verify that he or she has exhausted all nonexempt resources to meet living and/or medical expenses, including those amounts protected under the allowable resource levels.

The period of ineligibility for a transfer of property cannot extend longer than 30 months from the date of the transfer. The period of ineligibility shall be established based on the uncompensated value of the transferred property as noted below and shall begin with the month the property was tranferred.

To determine the period of ineligibility the uncompensated value shall be divided by the average monthly cost to a private patient of nursing facilities in the state. The number of months obtained shall be rounded to the lowest whole month.

If there is evidence that a transfer was made for the purpose of becoming eligible for assistance and the property is later reconveyed to the individual, or if there is an adjustment in the transfer through which full compensation is received, the loss of resource no longer exists and the client may, if otherwise eligible, receive assistance.

The applicant/recipient is responsible for providing clear and convincing evidence that the transfer of property was not for the purpose of establishing eligibility and that the transfer was exclusively for another purpose.

The decision of the agency with respect to convincing evidence shall be governed by the following criteria:

1. A transfer of property shall be considered in the light of the circumstances existing at the time the transfer was made.

2. The longer the interval between the transfer and the application, the more weight should be given to the applicant's statement that the transfer was for another purpose and not connected with the application for assistance.

3. Property transferred to relatives other than as exempted above and personal friends may be assumed to be for the purpose of becoming eligible unless evidence is presented that the transfer occurred exclusively for one of the following reasons: the property transfer was necessary in relation to a change in location or maintenance of a satisfactory standard of living; or the transfer was related to debt payment; or the salvaging of investment prior to foreclosure or failure of business or a business investment to assist the person to be partially or wholly self-supporting; or the transfer was for the purpose of liquidating a resource to provide for living expenses.

4. A transfer of property resulting from the removal of the applicant's or recipient's name from the title shall not affect eligibility providing the client can substantiate that he or she has no ownership interest in the resource, has not contributed to the resource, and that his or her access to the resource is limited to acting as an agent for the other person. This provision is not applicable to property that is held jointly by legally responsible persons.

5. In arriving at intent, the uncompensated value must be such that it would be evident to the ordinary individual that full value has not been received and all the circumstances will be considered in each case. It is not expected that all persons will avoid an error in judgment. If there has been considerable fluctuation in property values, the applicant may not have been aware of the full value of the property transferred.

**II. FOR TRANSFERS OCCURRING ON OR AFTER AUGUST 11, 1993:**

A period of ineligibility shall be established only for institutionalized persons only if full compensation was not received and the client has not established clear and convincing evidence that the transfer was not for the purpose of establishing eligibility. The client shall be given the opportunity to rebut the State's presumption that he or she transferred assets for less than fair market value. The client shall not be ineligible for assistance if such action is necessary to avoid undue hardship. In order to grant hardship, the individual must verify that he or she has exhausted all nonexempt assets to meet living and/or medical expenses, including those amounts protected under the allowable resource levels and his or her health or life would be endangered if deprived of medical care.

The period of ineligibility shall be established based on the uncompensated value of the transferred assets and shall begin with the month the assets were transferred.

To determine the period of ineligibility the uncompensated value shall be divided by the average monthly cost to a private patient of nursing facilities in the state. The number of months obtained shall be rounded to the lowest whole month.

If there is evidence that a transfer was made for the purpose of becoming eligible for assistance and the asset is later reconveyed to the individual, or if there is an adjustment in the transfer through which full compensation is received, the loss of asset no longer exists and the client may, if otherwise eligible, receive assistance.

The applicant/recipient is responsible for providing clear and convincing evidence that the transfer of assets was not for the purpose of establishing eligibility and that the transfer was exclusively for another purpose.

The decision of the agency with respect to convincing evidence shall be governed by the following criteria:

1. A transfer of assets shall be considered in the light of the circumstances existing at the time the transfer was made.

2. The longer the interval between the transfer and the application, the more weight should be given to the applicant's statement that the transfer was for another purpose and not connected with the application for assistance.

3. Assets transferred to relatives other than as exempted above and personal friends may be assumed to be for the purpose of becoming eligible unless evidence is presented that the transfer occurred exclusively for one of the following reasons: the asset transfer was necessary in relation to a change in location or maintenance of a satisfactory standard of living; or the transfer was related to debt payment; or the salvaging of investment prior to foreclosure or failure of business or a business investment to assist the person to be partially or wholly self-supporting; or the transfer was for the purpose of liquidating a resource to provide for living expenses.

4. A transfer of assets resulting from the removal of the applicant's or recipient's name from the title shall not affect eligibility providing the client can substantiate that he or she has no ownership interest in the asset, has not contributed to the asset, and that his or her access to the resource is limited to acting as an agent for the other person. This provision is not applicable to assets that are held jointly by legally responsible persons.

5. In arriving at intent, the uncompensated value must be such that it would be evident to the ordinary individual that full value has not been received and all the circumstances will be considered in each case. It is not expected that all persons will avoid an error in judgment. If there has been considerable fluctuation in property values, the applicant may not have been aware of the full value of the assets transferred.

Where a spouse transfers an asset that results in a penalty for the individual, if that spouse is later institutionalized and becomes eligible for Medicaid, the remaining penalty period shall be divided equally between the spouses. If the individual is no longer subject to a penalty (e.g. the individual no longer receives nursing facility services or the individual dies), the remaining period shall be served by the spouse. In no instance will the total period imposed on the couple exceed the length of the penalty originally imposed.